



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,546	02/12/2004	Carol J. Hansen	113255-001UTL	5753
27189	7590	11/10/2008		
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP				
530 B STREET				
SUITE 2100				
SAN DIEGO, CA 92101				
EXAMINER				
McCORMICK, GABRIELLE A				
ART UNIT		PAPER NUMBER		
3629				
NOTIFICATION DATE		DELIVERY MODE		
11/10/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@procopio.com

PTONotifications@procopio.com

Office Action Summary

Application No.

10/777,546

Applicant(s)

HANSEN, CAROL J.

Examiner

Gabrielle McCormick

Art Unit

3629

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Status of Claims

1. This action is in reply to the amendment filed on September 11, 2008
2. Claims 1, 3, 5 and 8-10 have been amended.
3. Claims 1-10 are currently pending and have been examined.

Drawings

4. Applicant has failed to respond with arguments or with replacement drawings to the objection rendered in Office Action of April 11, 2008.

Claim Objections

5. The Examiner thanks the Applicant for amendments to overcome some of the objections, however, claim 8 remains under objection as previously cited.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device.

9. Applicant has made some amendments to improve clarity of the claims, however, the claims remain replete with indefinite language.
10. The following claims contain limitations in which there is insufficient antecedent basis:
 - Claim 1: the job seeker information; the database search parameters; the profile; the potential employer; the job seeker's client's machine; the job seeker; the form; the softskills psychometric and technical skills profile form; the employment; the database.
 - Claim 2: the database; the job seeker's machine; the employer's machine; the internet.
 - Claim 3: the job seeker's machine; the employer's machine; the server; the softskills psychometric profile.
 - Claim 4: the softskills psychometric profile.
 - Claim 7: the employer and job seeker; the fit; the potential employer.
 - Claim 8: the website; the employment; the fields; the database; the data entry; the summary information; the softskills psychometric and technical skills profile fields; the job seeker; that particular employer.
11. Claim 3: the statement, "wherein the softskills psychometric profile, technical skills and resumes use XMAL (extensible markup language) which is text-based" is unclear as to what limitation it is meant to convey.
12. Claims 4, 5, and 6 are indefinite for failing to properly define the scope of the claims. Both are dependent from claim 1 which is a system claim. Claim 4 appears to change statutory categories to a hybrid apparatus/process claim ("The employment webservice and process as in claim 1") and claims 5 and 6 are directed to "A profile as in claim 4". Neither preamble constitutes categories that are eligible for patentability. Without proper preambles, the scope of the claims cannot be ascertained.
13. Claim 5: It is unclear how "do the work" and "team spirit" define character types.
14. Claim 6 states, "wherein the there is a technical skills profile". There is an apparent grammatical error that renders the claim indefinite.

15. Claim 8: the limitation, "receiving summary information for at least some of the fields of form from a corresponding job seeker submitted softskills psychometric test and technical skills profile" is unclear as to what is received and from where and the limitation, "stored in the database the data entry defined by the summary information from the softskills psychometric and technical skills profile fields, associating the summary information submitted by the employer and job seeker" is unclear as to what is the relationship between the stored data entry and the associating.
16. Claim 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: Claim 8 includes the step of "ranking the job seeker for each particular job they have applied for", however, there is no step that correlates to a job seeker applying for a job.
17. The Examiner finds that because claim 1-10 are replete with 35 U.S.C. 112 2nd paragraph indefiniteness rejections, it is difficult if not impossible to completely construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO's policy of providing art rejections even though the claim(s) contain 35 U.S.C. 112 2nd paragraph rejections, the claims are construed and the art is applied *as much as practically possible*. As noted below, Applicant(s) are invited to contact the Examiner if additional assistance is needed.

Claim Rejections - 35 USC § 101

18. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
19. Claims 4, 5 and 6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 4 appears to change statutory categories to a hybrid apparatus/process claim ("The employment webservice and process as in claim 1") and claims 5 and 6 are directed to "A profile as in claim 4". Neither preamble constitute categories that are eligible for patentability.

20. 35 USC 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" (emphasis added). Applicant's claim 4 mentioned above is intended to embrace or overlap two different statutory classes of invention as set forth in 35 USC 101. Claim 4 appears to change statutory categories to a hybrid apparatus/process claim ("The employment webservice and process as in claim 1"). "A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only", Ex parte Lyell (17 USPQ2d 1548).
21. Claims 5 and 6 are directed to "A profile as in claim 4". A profile is not one of the statutory categories defined above.
22. Applicant has failed to provide amendments or arguments to overcome this rejection cited in Office Action of April 11, 2008.

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
24. **Claims 1-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer et al. (US Pub. No. 2001/0034630, hereafter referred to as "Mayer") in view of Melamed et al. ("Psychometric instruments: Potential benefits and practical use". Industrial and Commercial Training. Guildsborough: 1995. Vol. 27, Iss. 4; pg. 11, hereafter referred to as "Melamed").
25. **Claims 1, 2, 3, 4, 5, 6, 7 and 8:** Mayer discloses an employment system wherein employers complete job profiles; candidates (i.e., job seekers) complete profiles; and searching and matching is performed where a percentage match between profile and search criteria is

calculated (P[0010] and Fig 4). Employers and candidates access via remote terminals over the Internet (P[0023] and Fig. 1). Matching job profiles are ranked according to the percentage of search terms that have been matched to the search request. (P[0077]). Data is stored in a job profile database (P[0081]). Technical skills are assessed and scored and used to generate a ranking, thus creating a technical skills profile. (P[0012] and [0054]). Mayer further discloses resumes (P[0045]) and XML (P[0043]).

26. Mayer does not disclose a softskills psychometric profile that includes distinct character types.
27. Melamed, however, discloses, "Job profiles can be produced in the form of job and person specifications by using commercially produced packages specifically designed for the purpose. Job match reports are produced by comparing the psychometric data for prospective candidates with the job profile information." (Pg. 3; para. 3). Thus, a job profile is inherently created that incorporates psychometric requirements. Melamed also discloses using psychometric instruments to optimize the composition of teams to improve team effectiveness. (pg. 2; para. 8). This inherently requires including distinct character types in order to create the optimal team composition.
28. Melamed does not disclose that the types comprise action seekers, leaders, workers and team spirit, however, it is obvious in the creation of an optimized team that a leader is designated, workers are assigned and that action seekers and team spirit would be included.
29. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a psychometric profile inclusive of character types, as disclosed by Melamed, in the system disclosed by Mayer, for the motivation of providing a method of identifying possible strengths and weaknesses against particular job requirements such that better quality decisions are made on job placements. (Melamed; pg. 3; para. 2).
30. **Claims 9 and 10:** Mayer discloses candidate profile data (Fig. 3A) and job profile data (Fig. 3B) that includes Candidate Identifier, Previous Job Experience (i.e., company name and job title), Geographic Preference, Employer Identifier, Title, and Location. Matching positions are presented and job profiles are ranked by percentage match (P[0077]). It is obvious to combine

the ranked job profiles according to percentage of match with the job profile (Fig. 3B) as one of ordinary skill in the art would recognize that the combination of this data would aid in a candidate's analysis of the various job matches. Mayer discloses that a candidate indicates interest in a job listing using a virtual button or checkbox, (P[0078]) thus the job status is inherently displayed.

31. Mayer does not disclose the date the profile was submitted, however, this difference is only found in the **nonfunctional descriptive data** and is not functionally involved in the steps recited. **The job profile would be performed regardless of inclusion of a date field.** Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
32. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the date the profile was submitted because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of fields of a profile does not patentably distinguish the claimed invention.

Response to Arguments

Applicant's arguments filed September 11, 2008 have been fully considered but they are not persuasive.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabrielle McCormick whose telephone number is (571)270-1828. The examiner can normally be reached on Monday - Thursday (5:30 - 4:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/777,546

Page 9

Art Unit: 3629

/John G. Weiss/

Supervisory Patent Examiner, Art Unit 3629